

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



October 16, 2002

**Agenda ID #1264**

**TO: PARTIES OF RECORD IN RULEMAKING 02-02-020**

This is the draft decision of Administrative Law Judge Walker. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ Carol Brown

Carol Brown, Interim Chief  
Administrative Law Judge

CAB: avs

Decision **DRAFT DECISION OF ALJ WALKER** (Mailed 10/16/2002)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Establish an  
Appropriate Error Rate for Connections Made by  
an Automatic Dialing Device Pursuant to  
Section 2875.5 of the Public Utilities Code.

Rulemaking 02-02-020  
(Filed February 21, 2002)

**SECOND INTERIM OPINION**

**1. Summary**

On its own motion, the Commission in this interim decision extends from January 1, 2003, to April 1, 2003, the effective date for changes in the acceptable error rate and other rules applicable to calls generated by predictive dialing telephone equipment. This three-month extension will give us additional time to consider comments by the parties following an industry workshop conducted by our Telecommunications Division.

**2. Discussion**

As required by Assembly Bill (AB) 870 (Ch. 696, Stats. 2001) and Pub. Util. Code § 2875.5, the Commission on June 27, 2002, established rules aimed at curbing the number of automated telemarketing calls in which the called party is subjected either to "dead air" or a disconnect.

As directed by AB 870, the Commission adopted definitions of "error" and "acceptable error rate" and established an acceptable error rate of 3% for calls generated by predictive dialing telephone equipment. An "error" is defined as a call answered by a live person in which (1) the predictive dialer disconnects the

call after the called party has answered, or (2) the called party does not receive a response from the calling agent or telemarketer within two seconds of the called party's completed greeting, or, alternatively, no agent or telemarketer is available within four seconds of the called party's telephone going off-hook.

In its interim order (Decision (D.) 02-06-072), the Commission directed that the four-second off-hook standard would be phased out by January 1, 2003, and the acceptable error rate on that date would be reduced to 1%.

The Commission also directed its Telecommunications Division to conduct an industry workshop within 90 days to take additional comments on the 1% rate and to consider record-keeping requirements for those using predictive dialer equipment. The workshop also sought suggestions on how best to inform consumers about ways to protect themselves from unwanted telephone calls.

The workshop was conducted on September 26, 2002. Following publication of a workshop report, parties were to file comments on the report and its recommendations.

Our intention was to issue a final decision in this proceeding before the end of the year. However, because of the number of comments that we are receiving, and the need to circulate a proposed final decision for further comments, we now believe that additional time is required before we issue final rules. Accordingly, on our own motion, we extend to April 1, 2003, the time for phasing out the four-second off-hook standard, reducing the acceptable error rate from 3% to 1%, and implementing other changes in the rules governing these types of calls. We expect to have a final decision in place well before the April 1 date.

### **3. Comments on Draft Decision**

The draft decision in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were received on \_\_\_\_\_.

### **4. Assignment of Proceeding**

Geoffrey Brown is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge.

### **Findings of Fact**

1. In D.02-06-072, the Commission adopted a definition of “error” and “acceptable error rate” for calls generated by predictive dialing telephone equipment, and established an acceptable error rate of 3%.

2. The acceptable error rate was to be reduced to 1% on January 1, 2003, following further analysis of this and other matters at an industry workshop conducted by the Telecommunications Division.

3. The Telecommunications Division workshop was conducted on September 26, 2002, and was followed by a workshop report and recommendations, and by comments by parties.

4. Because of the number of comments received, the Commission on its own motion proposes to extend the effective date for changes in the acceptable error rate from January 1, 2003, to April 1, 2003.

### **Conclusion of Law**

The effective date for changes in the acceptable error rate for calls generated by predictive dialing telephone equipment, as well as other changes in the rules applicable to such calls, should be extended from January 1, 2003, to April 1, 2003.

**O R D E R**

**IT IS ORDERED** that the effective date established by Decision 02-06-072 for changes in the acceptable error rate for calls generated by predictive dialing telephone equipment, as well as other changes in the rules applicable to such calls, is extended from January 1, 2003, to April 1, 2003.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.